IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SECOND APPEAL No. 193 of 1997

For Approval and Signature:

HONOURABLE MR.JUSTICE KS JHAVERI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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BARODA DISTRICT PANCHAYAT & OTHERS
Versus
RAMESH MANALAL MISTRY

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Appearance :
MR HS MUNSHAW for Appellants.
MR TUSHAR MEHTA for Respondent.

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CORAM : HONOURABLE MR.JUSTICE KS JHAVERI

Date : 20/07/2007

ORAL JUDGMENT

By way of the present Second Appeal, the appellants,

original defendants, have challenged the judgment and order dated 27th August 1997 passed by the learned 5th Joint Extra Assistant Judge, Baroda dismissing Regular Civil Appeal No. 90 of 1996 preferred by the present appellants and confirming the judgment and decree dated 6th May 1995 passed by the learned 3rd Joint Civil Judge, S.D., Baroda in Regular Civil Suit No. 538 of 1994.

Shorts facts of the case are that the original plaintiff was working as Talati-cum-Mantri. It is the case of the plaintiff that because he took strict action against some persons encroaching Government land and recovered some Rs.10 to 15 thousands from such persons, the plaintiff was victimized and was falsely involved in a case of taking illegal gratification of Rs.500/-. A notice was therefore issued to the plaintiff. Ultimately, the plaintiff was removed from service. The plaintiff challenged the removal order by filing Regular Civil Suit No. 538 of 94 before the Civil Judge, S.D., Baroda and prayed for a declaration that the order passed by the present appellants is null and void and he be reinstated in service. The learned trial Judge partly allowed the suit. Aggrieved, the present appellants preferred Regular Civil Appeal No. 90 of 1996 and the learned 5th Extra Judge, Baroda dismissed the appeal and confirmed the order passed by the learned trial Judge.

I have heard Mr. Munshaw for the appellants and Mr. Tushar Mehta for the respondent. I have also perused the records of the case.

The operative part of the order passed by the trial Court reads under:

> “The plaintiff's suit is partly decreed and it is held that whatever the decision for the removal of the service of the plaintiff is passed by the defendant authority on dt. 15/3/94 and 17-3-94 are contrary, null and void and against the rules of natural justice. The defendant is at liberty to move the Authority concerned by making a special representation along with certified copy of this order and it is ordered to the defendant authority to comply and to reinstate the plaintiff. Moreover back wages and further benefits of delinquent/plaintiff are concerned, I leave it to authority concerned to take the appropriate decision as per their desire.
>
> In view of the above observation the present matter stands disposed off.
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> The implementation of this order shall come into force from 1st June 1995 till that period the present order is suspended suemoto.
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> In that connection, it is ordered to take the decision regarding benefits etc. within 6 months preferably.”

The appellate Court also dismissed the appeal, against which the present Second Appeal is preferred.

While admitting the Second Appeal, the following substantial questions of law were framed:

> "(i). Whether the Civil Court can grant relief for reinstatement with backwages?
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> (ii). Whether the civil court can grant relief particularly when statutory provisions of appeals are provided under the Gujarat Panchayats Act and such statutory appeals are not preferred and suit is filed straightway before the civil court?
>
> (iii). Whether an employee can seek reliefs or reinstatement and back wages under the Law of Contract and Civil law by way of approaching civil court? Whether an employee can seek specific relief of reinstatement and back wages?
>
> (iv). Whether after holding that the departmental inquiry is just, the civil court can hold that the same is without following the principles of natural justice and grant reinstatement with other benefits?"

On going through the record, it is very clear that the trial Court has not straightway directed reinstatement. The trial Court has declared the impugned order as null and void and against the rules of natural justice. As regards reinstatement, the plaintiff was directed to make a special representation along with certified copy of the order and on such representation,

the authorities were ordered to take appropriate action. Even as regards the back wages and other benefits, the matter was left to the authority concerned to take the appropriate decision. In that view of the matter, I am of the view that no jurisdictional error is committed by the trial Court.

As regards the contention of statutory provisions of appeal, no such contention was raised before the trial Court and no such issue was framed. Even no application under Order 14 Rule 5 was moved for amending the issues. It is therefore not open for the appellants to raise such a contention in the present Second Appeal.

Even otherwise, there is a concurrent finding of fact arrived at by the courts below. This Court is not inclined to interfere with the concurrent finding of fact by the Courts below.

In the result, the appeal is dismissed. Interim Relief, if any stands vacated forthwith. No order as to costs.

[K.S. JHAVERI, J.]

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